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COMISION INTERAMERICANA PARA EL
CONTROL DEL ABUSO DE DROGAS
CICAD

Secretaría de Seguridad Multidimensional

XXXV GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
September 17-18, 2012
Buenos Aires, Argentina

OEA/Ser.L/XIV.4.35
CICAD/doc.6/12
17 September 2012
Original: Español

**LEGISLATIVE PROGRESS IMPLEMENTED IN COMPLIANCE WITH FATF/GAFI
RECOMMENDATIONS AND ITS MUTUAL EVALUATION TO ARGENTINA**

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Buenos Aires, September, 2012



Anti-Money Laundering and Counter Financing of Terrorism (AML/CTF) System

- 3 Laws
- 3 Decrees
- 40 Resolutions



Anti-Money Laundering and Counter Financing of Terrorism (AML/CTF) System

- Law 26683 (It amended the ML legal definition and the AML/CTF Administrative System)
- Law 26734 (It amended TF – It criminalizes the individual terrorist – Terrorist organization - Terrorist acts – Administrative freezing of terrorist assets)
- Law 26733 (It criminalized market manipulation and insider trading offences)
- Decree 1936/10 (AML/CTF FIU Coordination - Representation)
- Decree 918/12 (Terrorist Assets Freezing - Listing and delisting from UN Security Council Lists)
- Decree 826/11 (National Registry of Forfeited and Seized Assets)
- Resolutions that set forth measures and procedures that Reporting Parties shall comply with to Prevent, Detect, and Report Facts, Acts, Omissions, or Transactions that may result from or be related to the commission of ML/TF offences.
- Resolutions enforceable to all RP.
- Resolutions that govern all FIU's powers.



Decree 1936

(14/12/10)





Decree 1936
December 14, 2010

FIU

- AML/CTF National, Provincial and Municipal Regulatory Agency; it has management powers in relation to all public agencies.

- National Coordination and Representation before FATF/GAFISUD/LAVEX-CICAD-OAS

Impact on Recommendation 26 (FIU) – R. 29 (Supervision – Regulatory Agencies) –
R. 30 (Resources of Agencies) – R. 32 (Efficiency of the AML/CTF System – Statistics) –
R. 40 (AML/CTF International Cooperation)

Law 26683

(21/06/11)



Law 26.683

June 21, 2011

- It incorporates a new Title to the Second Volume of the CRIMINAL CODE. (Impact on compliance with Recommendation 1)
- It adjusts the criminal description of Money Laundering to international standards – autonomy – new typical behaviors – (Impact on compliance with Recommendations 1, 36-40).
- Criminal Liability of Legal Persons – (Impact on compliance with Recommendation 2).
- Injunctions enough to ensure custody, management, maintenance, execution, and alienation of assets that are instruments, product, proceeds or effects related to the ML crime – (Impact on compliance with Recommendation 3).
- Permanent Forfeiture for the case of ML transactions, irrespective of the existence of a criminal conviction, whenever the legality of their origin, or the material fact they were related to, could be proven, and the accused could not be brought to trial (death, escape, prescription or suspension or expiry of the criminal action) or when the accused admitted the illegal origin or use of assets – (Impact on compliance with Recommendation 3).

MONEY LAUNDERING OFFENCE

Section 278

- Title XI of the Criminal Code CRIMES AGAINST PUBLIC ADMINISTRATION. Chapter XIII: Concealment and Laundering of Proceeds of Crime.
- Objective Condition of Punishment - Under \$50,000 it referred to concealment (Section 277 of the CC)
- Reception: Rules of Section 277.

Section 303

- Title XIII of the Criminal Code CRIMES AGAINST ECONOMIC AND FINANCIAL ORDER.
- There is no objective condition of punishment.
- Aggravating Conditions: regularity/criminal association/public officer.
- Reception: Minor punishment.



MONEY LAUNDERING OFFENCE

Section 278

- Whoever converts, transfers, manages, sells, encumbers, disguises or otherwise applies money or other assets **resulting from a crime he did not participate in**, with the possible consequence that the source of the original assets or the substitutes thereof appear to come from a lawful source provided that its value does not exceed the amount of **\$50,000**, whether in one act only or by the repetition of several related acts, shall be punished with 2 to 10 years' imprisonment and a fine of 2 to 10 times the amount of the transaction;

Section 303

- **Whoever converts, transfers, manages, sells, encumbers, or otherwise gets into the market** proceeds of crime, with the possible consequence that the source of original assets or the substitutes thereof appear to come from a lawful source and provided that their value does not exceed the amount of **\$300,000**, whether in one act only or by the repetition of several related acts shall be punished with 3 to 10 years' imprisonment and a fine of 2 to 10 times the amount of the transaction.





Unidad de Información Financiera
ARGENTINA

Law 26683

June 21, 2011



POWERS OF THE FIU:

- Secrecy Lifting – (Impact on compliance with Recommendation 4).
- Supervision – (Impact on compliance with Recommendation 26).
- Regulatory Powers: Regulatory Agencies can issue rules complementary to the FIU's, but they cannot extend or modify their scope – (Impact on compliance with Recommendations 5, 17, 23 and 29).



Law 26683

June 21, 2011

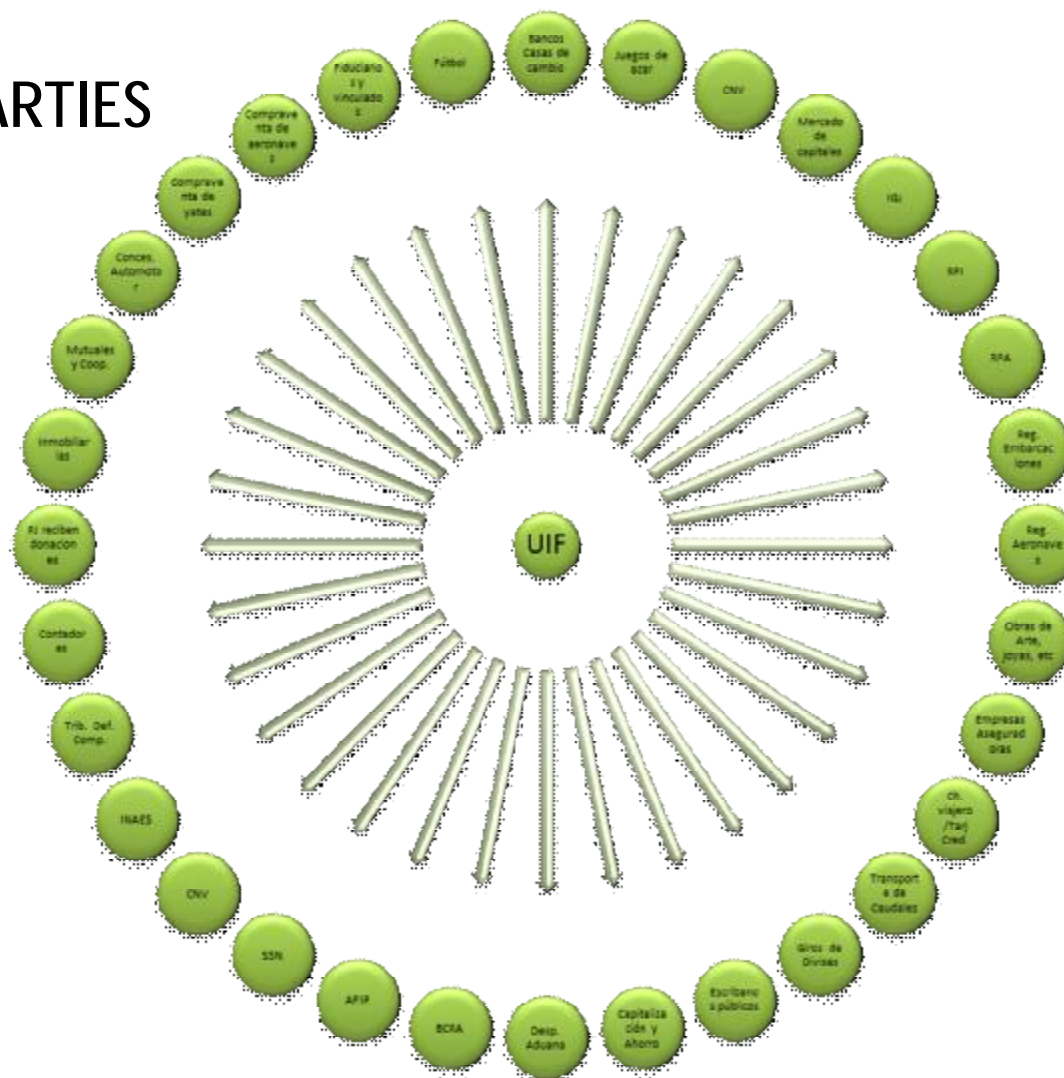


IMPROVEMENT TO AML/CTF PREVENTIVE SYSTEM:

- FIU's Autonomy – (Impact on compliance with Recommendation 26).
- It expands the administrative competence of the FIU to all predicate offences – (Impact on compliance with Recommendations 13, 26).
- It includes new reporting parties – (Impact on compliance with Recommendations 5, 12).
- It introduces new CDD measures – (Impact on compliance with Recommendations 5, 6, 7, 8, 9, 10).
- It sets forth the duty to report suspicious transactions – ML/TF STRs – (Impact on compliance with Recommendation 13 and SR IV).

LAW 26683

REPORTING PARTIES



29,000 R.P.
REGISTERED



Law 26683

June 21, 2011



JUDICIAL POWERS ON ML/TF MATTERS

- a) Suspension of the arrest warrant of one or more individuals;*
- b) Postpone within the Argentine territory the interception of unlawful-origin cash remittances or assets;*
- c) Suspension of the seizure of instruments or proceeds of the crime under investigation;*
- d) Postpone the execution of coercive or evidentiary measures;*
- e) Order the protection of the identity of a witness or an accused individual who cooperated with the investigation*

(Impact on compliance with **Recommendation 27**).



Law 26734 (28/12/11)





Unidad de Información Financiera
ARGENTINA

Law 26734

December 28, 2011



- It criminalizes as aggravating factor the Crime of Terrorism (First Volume).
- It enables the criminalization of the individual terrorist, terrorist organization and terrorist act.
- It criminalizes the Terrorist Financing Crime (Title XIII).
- It empowers the FIU to administratively freeze assets related to TF.

(Impact on Special Recommendations I & II and Recommendations 36 through 40 and SR. V)



Terrorism

First Volume of the CC

Whenever any of the crimes were committed with the purpose of:

- terrorizing the population
- or compelling national public authorities or foreign government or officials from an international organization to perform or refrain from performing an act
- the minimum and maximum penalties shall be doubled.

The aggravating factors provided in this section shall not be applied when such act(s) constitute the exercise of a human and/or social right or any other constitutional right.



Terrorist Financing

Title XIII of the Criminal Code

Whoever **directly or indirectly**
collects or provides assets or money,
with the intention that they be used, or **knowing** that they will be totally or partially used:

- **To finance the perpetration of a crime** with the aim set forth under section 41 quinquies;
- By an **organization** that commits or attempts to commit crimes with the aim set forth under section 41 quinquies;
- By an **individual** who commits, attempts to commit, or participates in any way in the commission of crimes with the aim set forth under section 41 quinquies.
- Penalties established shall be applied **irrespective of the occurrence of the financed crime** and, if the crime is actually committed, even if the property or money were not used for its commission.
- The crime is constituted even when the offence that is intended to be financed occurred **outside of the scope of spatial jurisdiction** or when the organization or the individual were outside the national territory, provided that the act would have been sanctioned had it occurred in its competent jurisdiction.
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Law 26733

(28/12/11)





Unidad de Información Financiera
ARGENTINA

Law 26733

December 28, 2011



It incorporates two categories of ML predicate offences required by international standards that previously did not exist in the Argentine Law:

- It criminalizes the crime of Market Manipulation.
- It criminalizes the crime of Insider Trading.

(Impact on Recommendation 1 and Recommendations 36-40)



Decree 918/12

(14/06/12)



Decree 918/12
June 14, 2012



- It regulates the power of the FIU to administratively freeze assets related to TF pursuant to UNSCR 1267/99 and 1373/01.
- Procedure to List and Delist from UN Security Council Lists.

(Impact on Special Recommendation III)



Administrative Freezing Persons Designated by the United Nations Security Council

- ADMINISTRATIVE FREEZING

Freezing of assets or money, understood as the prohibition to transfer, convert, alienate or move money or other assets.

- ASSETS OR MONEY:

Assets, funds, or property, whichever their nature, origin and way of acquisition.

In addition to documents or instruments that prove the ownership or interest in these assets, funds or property and the interests thereof, dividends, or any other value or income accrued or produced by those assets, funds or property;

provided that they be fully or jointly owned or under the direct or indirect control of persons or groups designated by the United Nations Security Council or that may be related to criminal acts provided for in Section 306 of the CRIMINAL CODE.



Administrative Freezing Persons Designated by the United Nations Security Council

1. DUTY TO PROMPTLY REPORT A TF SUSPICIOUS TRANSACTION (OR ITS ATTEMPT)
2. TF SUSPICIOUS TRANSACTION:
 - Property directly or indirectly owned by the designated person.
 - Transactions carried out by designated persons.
 - The addressee or beneficiary of the transaction is a designated person.
3. ADMINISTRATIVE FREEZING: Two-fold system: Financial Sector, Securities Market, and Insurance Sector: automatic (immediately). Other sectors: ordered by the FIU without delay.



Administrative Freezing Persons Designated by the United Nations Security Council

ADMINISTRATIVE FREEZING:

- Inaudita parte.
- Promptly

NOTICE:

- To Reporting Parties (electronically)
- To the regulatory agencies
- To the Ministry of Foreign Affairs
- To the Judge in Criminal Matters.



Administrative Freezing Section 306 of the CC

TFR or request from public authority: ADMINISTRATIVE FREEZING:

- Inaudita parte.
- Promptly
- 6 months

NOTICE:

- To Reporting Parties (electronically)
- To the requesting authority
- To the regulatory agencies
- To the Judge in Criminal Matters.
- To foreign countries



Decree 826/11

(21/06/11)



Decree 826/11

June 21, 2011



It creates the **National Registry of Forfeited and Seized Assets during the Criminal Action.**

Purpose: the identification, registration, assessment, and localization of all seized, forfeited or affected assets by an injunction within the framework of a criminal action.

(Impact on Recommendations 3, 38 and SR III)



FIU RESOLUTIONS ENFORCEABLE TO ALL REPORTING PARTIES

- Res. 125/09 amended by FIU Res. 28/12 . TF (Impact on SRII and III)
- Res. 11/11 - Politically Exposed Persons (Impact on R. 5 & 6)
- Res. 50/11 - Registration of Reporting Parties (Impact on R. 30)
- Res. 51/11 - Online Suspicious Transaction Report System - (Impact on R. 13, 30)
- Res. 70/11 - Systematic Transaction Reports (Impact on R. 30)
- Res. 104/10 amended by FIU Res. 165/11 and 12/12 - Onsite Supervision, Oversight and Inspection Procedures by the FIU and Specific Regulatory Agencies - amended by Res. 220/11 - Onsite Supervision, Oversight and Inspection Procedures by the AFIP - Impact on R. 23 and 24)

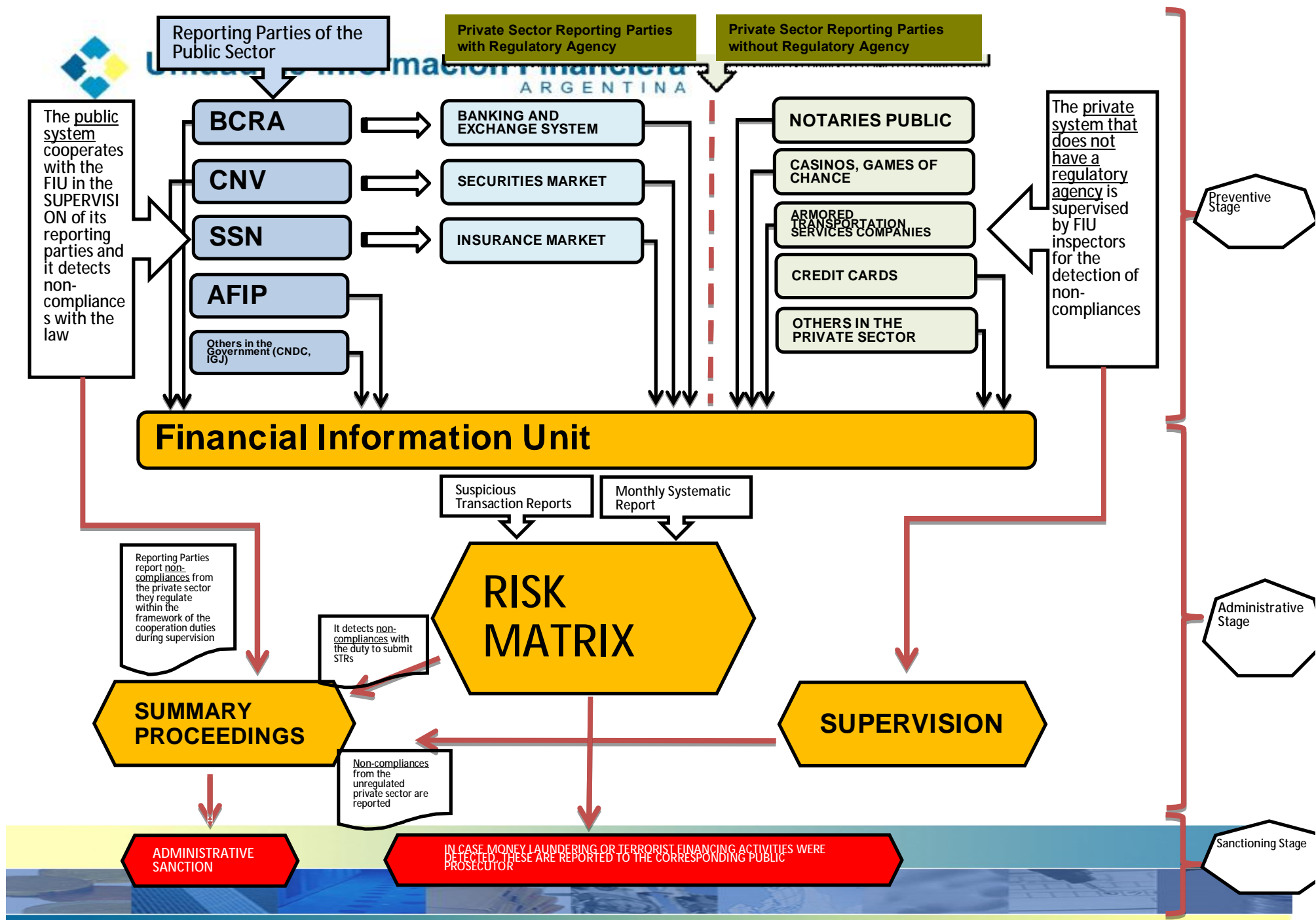


REGULATION

OBJECTIVE GUIDELINES FOR EACH REPORTING PARTY

1. ML/TF PREVENTION POLICY
2. CUSTOMER IDENTIFICATION POLICY (CDD)
3. DUTY TO REPORT (STR-TFR-SR)
4. PENALTIES





Thank you!

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